

Operational Review Surplus Property (Real Property)

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State Sponsor: Department of General Services

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Background:

The Governor's Commission on Efficiency and Effectiveness (2002) recommended that the Commonwealth engage in an enterprise-wide review of its real estate management practices, with the aim of identifying savings opportunities and improving management practices. In 2003, an independent study commissioned by the Department of General Services suggested numerous opportunities for cost savings for the Commonwealth through greater collaboration and portfolio management of state-owned real property. The 2004 General Assembly enacted Chapters 750 and 997 relating to the management and use of state-owned real property. This legislation sets forth additional requirements for the management and cost-effective use of state-owned real property.

In 2004, Executive Order 75 "Managing the Commonwealth's Real Estate Holdings" was issued. This EO, in part, directs the Secretary of Administration to execute:

"a system-wide reengineering of the Commonwealth's real estate processes, including acquisitions, sales, easements and leases.."

As part of this reengineering initiative, the Department of General Services, Division of Real Estate Services (DRES) was established. DRES is responsible for the strategic planning and development of real estate processes for acquisitions, sales (surplus property), easements, and leases of state-owned and leased property by Executive Branch agencies.

Best Practices:

A research report by The Association of Government Accounts (AGA) in 2007¹, documents responses to a survey the AGA conducted on real property asset management. The following best practices, as they relate to the disposal of surplus property, were presented in the AGA study:

- Establish a uniform automated and integrated portfolio management system based on the convergence of the separate real estate data systems in place
- Follow the procurement rules
- Never allow any special treatment for anyone (real or perceived)
- Inform all interested parties in the disposal of real property
- Ensure clear legislation exists that allows conveyance
- Ensure that the legal descriptions are accurate
- Have a clear understanding of the politics involved
- Ensure that local government and elected officials are informed of the disposal process
- Agreements of sale that are contingent on planning and zoning modifications that require the state to be a co-applicant can be controversial
- Achieving fair market value in the sale is essential to maintaining the public's trust and confidence in the state's stewardship of its assets

- Disposition of excess property is vetted inter/intra governmentally via the state clearing house
- Surplus determination is made by the central agency responsible for the state's property, the chief executive, and the state's chief financial officer
- Establishment and use of a facilities assessment program, space management program and real estate services
- Open lines of communication with all agencies and branches of government
- Clearly defined lines of authority and responsibility
- Legislative or regulatory changes:
 - o Provide financial incentives to the custodial agency to dispose of excess assets
 - o Provide universal authority to sell or trade property
 - o Provide flexibility and freedom to move in the market based on timing and need that is controlled by administrative rules not statutory regulations
 - o Allow the state's custodian of real property assets (where the state's real property is assigned to a single centralized agency) the authority to dispose of real property

Accomplishments:

Since its inception, DRES has documented approximately \$89M in lease savings and cost avoidance for the Commonwealth as a result of its reengineered real estate portfolio management model.

DRES is the central repository for real estate surplus data. Currently sales data and surplus property opportunities are listed:

During the past year, DGS sold seven properties, identified in the following chart, generating income of \$16,932,200.

- Western State Hospital, Staunton
- Parking lot in Roanoke
- Department of Military Affairs facility in Campbell
- Virginia Employment Commission facility in Petersburg
- Department of Forestry property in Staunton
- Virginia Department of Agriculture and Consumer Services facility in Harrisonburg
- Department of General Services facility in Abingdon

There are two properties currently under contract with a combined value of \$1,061,100, and six properties for sale with an estimated combined value of around \$5M.

Surplus property management strategies moving forward:

The following strategies were prepared by the real estate operational review committee. These strategies support the intent of the best practices documented in this report; they are not presented in any particular order of importance.

Strategy 1: The Commonwealth should perform the following actions to maximize revenues from the disposal of its owned real estate:

- Define “surplus property” with an expanded definition that promotes revenue generation through disposal. Specifically, the Commonwealth should look for opportunities to classify its owned real estate as surplus property. This means identifying under-utilized or inefficiently used property where value may be generated and maximized through a disposition strategy (sale, lease or public private partnership).
- Identify and inventory all owned real estate, and classify all surplus property. Prioritize the disposition of surplus property based on its potential value and opportunity for revenue generation.
- Seek opportunities to reduce owned real estate portfolio through efficiencies in space utilization. Identify consolidation and space reduction opportunities that promote classification of new surplus property for disposition.
- Perform highest and best use analysis, including estimating market value, to enable cost/benefit analysis in decision-making on owned real estate.
- Utilize asset management strategy - track information about properties, including expenses, revenues, value, tenants, etc. to establish baselines for data driven decisions.

Strategy 2: Disposal of surplus properties should be commercially competitive. Statutory impediments should be removed:

Appropriation Act:

- **Eliminate Unnecessary Steps and Delays in the Sale Process:** §4-5.09 DISPOSITION OF SURPLUS REAL PROPERTY provides that surplus property shall not be sold or leased except under certain circumstances, including that either an emergency exist in accordance to §§44-146.18.2 or 44-146.28 of the Code or the Governor has notified the Chairmen of the House Appropriations and Senate Finance Committees at least 30 prior to sale of the property.

This Section has the potential impact of loss of sales due to delays in closing.

- **Eliminate Impediments that Discourage Sales and Establish Unreasonable Restrictions:** §4-5.10 SURPLUS PROPERTY TRANSFERS FOR ECONOMIC DEVELOPMENT provides that the Commonwealth shall receive the fair market value of surplus state property which is designated by the Governor for economic development purposes, and for any properties owned by an Industrial Development Authority in any county where the Commonwealth has a continuing interest based on the deferred portion of the purchase price, which shall be assessed by more than one independent appraiser certified as a Licensed General Appraiser. Such property shall not be disposed of for less than its fair market value as determined by the assessments.

This Section discourages transactions with local economic development organizations that represent a fairly large group of potential purchasers, and their use of real estate can bring major benefits to the Commonwealth.

Strategy 3: Virginia Code Amendments:

- **Eliminate Restrictions on Private Use of Property.** §2.2-1156A requires that, after it determines the property to be surplus to the needs of the Commonwealth and that such property should be sold, the Department shall request the written opinion of the Secretary of Natural Resources as to whether the property is a significant component of the Commonwealth's natural or historic resources, and if so how those resources should be protected in the sale of the property. The Secretary of Natural Resources shall provide this review within 15 business days of receipt of full information from the Department. Within 120 days of receipt of the Secretary's review, the Department shall, with the prior written approval of the Governor, proceed to sell the property.

Once property is conveyed outside of the Commonwealth it becomes subject to local ordinances and codes. To put additional restrictions on use of property is counter productive.

- **Incentivize Agencies to Dispose of Surplus Property by Providing for Retention of All or a Portion of Revenues Generated from Disposition.** §2.2-1156H provides that fifty percent of the proceeds from all sales or leases, or from the conveyance of any interest in property, above the costs of the transaction, is to be paid, subject to any contrary provisions of law, into the Conservation Resources Fund. The remaining 50 percent of proceeds involving general fund sales or leases is to be deposited in the general fund. However, under guidelines developed by the Department of Planning and Budget, any portion of the deposit in the general fund may be credited to the agency. Any amounts so credited may be used, upon appropriation, to supplement maintenance reserve funds or capital project appropriations, or for the acquisition, construction or improvement of real property or facilities.

The incentive of allowing general fund agencies to re-claim the 50% share of proceeds going to the general fund under certain circumstances apparently has not

been effective. More thought should be given to incentivizing general fund agencies to sell surplus property.

Also, especially given that many state services are being reduced due to lack of funds, it no longer makes sense to pay fifty percent of the proceeds generated by sale of general fund properties to the Conservation Resources fund. This provision should be eliminated or the percentage reduced.

Strategy 4: Consideration should be given to placing VDOT excess right of way under DGS for disposal:

- Appropriate checks and balances need to be established. VDOT should justify continued holding of real estate, including unused properties acquired for right of way.
- VDOT should provide a complete inventory of its holdings of properties purchased for right of way which are not used for roads.
- Statutes regarding disposal of excess right of way should be reviewed for relevance.
- Large parcels of right of way which cannot be conveyed to other parties, particularly those around interchanges and intersections, should be examined for productive uses.
- Air space above highways, including limited access highways, is a potential source of revenue that should be explored.

Strategy 5: Oversight of Surplus Property Disposal Actions:

That the Secretary of Administration should develop recommendations for the review of land use plans, and processes for declaring state-owned property surplus. Following approval by the Chief of Staff of the SOA's recommendations, the SOA will direct the Department of General Services, Division of Real Estate Services (DRES) to implement approved recommendations in the DRES real property management policies and procedures manual.

Strategy 6: Consideration should be given to placing control of all state-owned land in a single agency (the Department of General Services):

- This would centralize decision-making with respect to utilization and disposition of real property under one agency.
- Using agencies would retain management, operation and control of facilities.

- This proposal is supported by the fact that under the current scheme established in Va. Code §2.2-1147 land is owned by the Commonwealth rather than individual agencies.

¹AGA Research Report titled: Federal Real Property Asset Management, dated March 2007;
<http://www.agacgfm.org/research/downloads/cpag8.pdf>